used, it affords reasonable evidence, in the absence of explanation by the defendant (plaintiff here) that the accident arose from lack of proper care. *Muskogee Electric Traction Co. v. McIntire,* 37 Okla. 684; *McNulty v. Ludwig & Co.,* 153 App. Div. 206; *The Joseph B. Thomas,* 81 Fed. 578. The application of the doctrine of *res ipsa loquitur* does not shift the burden of proof. In fact, it does not even raise a presumption—that is, evidence sufficient to invoke this principle *may* not be sufficient to justify a directed verdict, in absence of rebuttal by defendant, but it must be presented to the jury and is sufficient to support an inference by the jury that the defendant was negligent. 24 Yale Law Journal 255 (Jan. 1915 and cases cited. A minority of jurisdictions (illustrated by the principal case), as shown above, go further as to contributory negligence and say that not only is a presumption raised but the burden of proof is shifted. The majority holding is contra.

PRINCIPAL AND AGENT—SALE OF PRINCIPAL'S PROPERTY BY AGENT TO HIMSELF.—HUTTON ET AL. V. SHERRARD ET AL., 150 N. W. (MICH.) 135.—*Held,* where agents have authority to sell land for a principal retaining for their compensation that part of the purchase price received over and above a minimum price specified, such agents may make a valid sale to themselves without previous consent or ratification by the principal.

It is a general rule of equity of universal application that parties in a position of trust with respect to a thing are not allowed to purchase that thing for themselves. *Grubbs v. McGlawn,* 39 Ga. 676; *Lamar's Ex'rs. v. Hale,* 79 Va. 158. This rule applies to agents whose relation to their principals precludes them from obtaining any advantage over their principals in any transaction had by virtue of the agency. *Calmon v. Saraille,* 142 Cal. 638; *Fairman v. Bavin,* 29 Ill. 75. An agent is bound to exercise his agency in the mode in which he knew his principal intended it to be carried out. *Hofflin v. Moss,* 67 Fed. 440. The reason for the general rule, as applied to agency, is the protection of the principal's interest from possible subordination to the interest of the agent. *Porter v. Woodruff,* 36 N. J. Eq. 174; *Rochford Watch Co. v. Manifold,* 36 Nebr. 801. Many cases cite the rule without exceptions, but a majority of jurisdictions hold that a purchase by the agent is binding if made with the previous consent or subsequent ratification of the principal, the principal having full knowledge of all the facts at the agent's command. *Burke v. Bours,* 98 Cal. 171; *Rochester v. Levering,* 104 Ind. 562. If such sale is made without the previous consent of the principal it is voidable at the option of the principal even in the absence of fraud. *Rockford Watch Co. v. Manifold,* supra; *Bain v. Brown,* 56 N. Y. 285. Although the agent has a power of attorney to convey, a conveyance to himself would not give him title as against the principal. *Cleveland Ins. Co. v. Reed,* 1 Biss. 180. There seems to be only three adjudicated cases precisely on all fours with the principal case. *Synnott v. Shaughnessy,* 2 Idaho 122, cited by the court, is in accord, the majority opinion holding that the contract of agency, which is like that in the principal case, is a verbal option.

Cheezum v. Kreighbaum, 4 Wash. 680, holds that such a contract cannot be construed as an option; that it is only a power to sell, and that the agent is allowed to get no benefit from such a contract save his commission. *Meek v. Hurst,* 223 Mo. 688, is also contra to the principal case, holding that the agent should not be allowed to purchase on grounds of public policy, which requires the agent's eye to be kept clear to the principal's welfare. The reasoning in the last case is not convincing and the other two were decided by divided courts. The doctrine of the principal case seems sound.

PROCESS—SERVICE BY TELEPHONE.—LOWMAN & CO. V. BALLARD, 84 S. E. (N. C.) 21.—*Held,* under a statute which required that a summons be read to the party or parties defendant, the reading of a summons over the telephone where the sheriff recognized the voice of the defendant was not a valid service. Clark, C. J., and Allen, J., *dissenting.*

On the point which arose in the principal case there is a dearth of authority. Only one case involving service of process has been found though it is possible to draw analogies from somewhat similar cases along other lines. It has been held that the service of a subpoena by telephone was not a legal service. *Ex Parte Terrell,* 95 S. W. (Tex.) 536. Where demand on a promissory note was made over telephone it was held that the demand was invalid. *Gilpin v. Savage,* 201 N. Y. 167. On the other hand, it was remarked in *Thompson Co. v. Appleby,* 5 Kans. App. 680, that such demand can properly be made over a telephone if the holder of the note is sure that he is talking to the right party. In that case he was not. The cases which hold such demand invalid are at any rate put upon a ground which does not apply to the recent cases, namely, that the note must be shown to the maker. It has been held that an oath or acknowledgment cannot be taken over the telephone. *Sullivan v. First National Bank,* 37 Tex. Civ. App. 238. These meagre authorities would seem to cast great doubt upon the validity of such a service by telephone. The words of the statute would permit a service by telephone if taken literally, but, as the court points out, the statute is older than the use of the telephone—at least its general use. The fact that the legislature never intended such a service, the uncertainties and abuses which are likely to attend it, coupled with the fact that it is really an uncalled for innovation, would seem to justify the holding of the principal case.

QUASI-CONTRACTS—PLAINTIFF IN WILFUL DEFAULT—BUILDING CONTRACTS.—MALLORY ET AL. V. CITY OF OLYMPIA, 145 PAC. (WASH.) 627.—*Held,* where the plaintiff wilfully and inexcusably abandoned his building contract with the defendant, and the defendant has, pursuant to an express provision of the contract, taken over and completed the work, the plaintiff can recover the reasonable value of his labor and materials.

Where the plaintiff has wilfully and inexcusably refused to perform the conditions of an express contract, the general rule is that he can not recover for the benefit conferred upon the defendant. *Keener on Quasi-*